

# Michael Faillace & Associates, P.C.

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June 22, 2017

## **BY ECF**

Honorable Paul G. Gardephe  
United States District Judge  
Southern District of New York  
40 Foley Square, Room 2204  
New York, NY 10007

Re: Olivares v. 1761 Fonda Mexico Magico et al.  
17-cv-01082 (PGG)

Your Honor:

This office represents Plaintiff Victor Mendez Olivares (“Plaintiff”) in the above referenced matter. Pursuant to the Court’s Individual Rules requesting a letter to be filed no later than seven days prior to the Initial Pretrial Conference, and in anticipation of the Initial Conference currently scheduled for June 29, 2017 at 10:00 A.M., the parties submit the following joint letter.

### **I. Brief Statement of the Nature of the Case**

#### **Plaintiff’s Statement**

Plaintiffs bring this action to recover unpaid minimum and overtime wages, spread of hours pay, liquidated damages, interest, attorneys’ fees, and costs pursuant to The Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.* (FLSA, the New York Minimum Wage Act, N.Y. Lab. Law 650 *et seq.*, and the spread of hours wage order of the New York Commission of Labor codified at N.Y. COMP. CODES R. & REGS. tit. 12, 142-2.4 (herein the Spread of Hours Wage Order).

Specifically, Plaintiff was employed by Defendants ostensibly as a delivery person but in actuality served as an all-purpose member of the kitchen staff at the Defendants’ restaurant located at 1761 Crosby Avenue, Bronx, NY 10461. Plaintiff alleges that Defendants required Plaintiff and other employees to work in excess of forty (40) hours per week without providing the appropriate minimum and overtime compensation mandated by federal and state law and regulations. And, also, that Defendants unlawfully withheld a tip credit from the Plaintiffs without an entitlement to do so. Plaintiff also alleges that Defendants violated the recordkeeping and notice/statement provisions of the NYLL.

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**Defendant's Statement**

Individual Defendant Paco Paredes is affiliated with Corporate Defendant 1761 Fonda Mexico Magico LLC d/b/a/ Mexico Magico (hereinafter collectively referred to as the "Mexico Magico Defendants"). The Mexico Magico Defendants deny all material allegations and assert that the plaintiff was paid in accordance with all applicable wage and hour, spread of hours and overtime laws.

**II. Contemplated Motions**

Plaintiff contemplates making a motion for summary judgment after depositions are completed.

**III. Prospect for Settlement**

The parties are always open to discussing settlement but believe that settlement discussions might be most productive after Defendants are able gather and produce whatever payment and attendance records they have in their possession.

Respectfully Submitted,

/s/ Colin Mulholland, Esq.\_\_\_\_\_

Colin Mulholland, Esq.

CC: (By ECF)  
Michael K. Chong, Esq.  
*Attorneys for Defendants*